

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCUS D. JOHNSON,

Petitioner,

v.

SAN JOAQUIN SUPERIOR COURT,

Respondent.

No. 2:23-cv-0157 AC P

ORDER

Petitioner, a state prisoner proceeding pro se and in forma pauperis, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition relates to petitioner's 2020 conviction in San Joaquin County Superior Court for second degree robbery with a ten-year gun enhancement in cases number STK-CR-2020-13511 and STK-CR-2020-13898. ECF No. 1 at 1. Court records reflect that petitioner is presently challenging the same conviction in an earlier filed action, which remains pending, Johnson v. St. Andre (Johnson I), 2:22-cv-1412 TLN AC (E.D. Cal.).

When a new habeas petition is filed while a previous petition is still pending before the district court without a decision having been rendered, the new petition should be construed as a motion to amend the previously filed petition. Woods v. Carey, 525 F.3d 886, 890 (9th Cir. 2008). The petition filed in the instant action should therefore be construed as a motion to amend

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the already pending petition, and filed as such in Johnson I.¹

Accordingly, IT IS HEREBY ORDERED that:

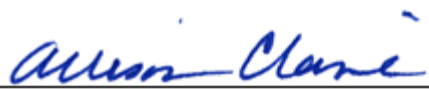
1. The January 27, 2023 petition (ECF No. 1) is construed as a motion to amend the petition in in Johnson v. St. Andre, 2:22-cv-1412 TLN AC;

2. The Clerk of the Court is directed to file the petition as a motion to amend in Johnson v. St. Andre, 2:22-cv-1412 TLN AC;

3. The motion to proceed in forma pauperis (ECF No. 6) is DENIED as moot; and

4. The Clerk of the Court is directed to close this case.

DATED: July 6, 2023


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

¹ It appears that the instant petition may have originally been intended as an amended petition in Johnson I. In that case, the court issued an order on January 9, 2023, directing petitioner to file an amended petition and then provided petitioner additional time to file an amended petition after an amended petition was not filed within the deadline provided. Johnson I., ECF Nos. 7, 8. The petition in this case was dated January 20, 2023, and received on January 27, 2023. ECF No. 1.